

San Francisco Bay Conservation and Development Commission

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TO: Commissioners and Alternates

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SUBJECT: **Staff Summary Report and Preliminary Recommendation for the Solano County Component of the Suisun Marsh Local Protection Program**
(For Commission consideration on February 7, 2019)

Preliminary Staff Recommendation Summary

The staff preliminarily recommends that the Commission:

1. Certify the amended Solano County Component of the Suisun Marsh Local Protection Program (LPP); and
2. Direct the staff and Commission to consider a comprehensive review of the Suisun Marsh Protection Plan and the Suisun Marsh Preservation Act to update them and address emerging issues in the Marsh.

Background

Suisun Marsh Preservation Act and Suisun Marsh Protection Plan. Pursuant to the Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act (SMPA) of 1974, the Commission prepared a *Suisun Marsh Protection Plan* (SMPP) to “preserve the integrity and assure continued wildlife use” of the Suisun Marsh in 1976. The SMPP proposed, as described in the transmittal letter, the creation of:

“(1) a primary management area [PMA] encompassing the 89,000 acres of tidal marsh, managed wetlands, adjacent grasslands, and waterways over most of which BCDC now has jurisdiction [under the McAteer-Petris Act], and a secondary management area [SMA] of approximately 22,500 acres of significant buffer lands. Under specific guidelines in each area, Solano County would be responsible for preparing and administering a local protection program [LPP]. BCDC would represent the state's interest, serving as the land use permitting agency for major projects in the PMA, and as an appellate body with limited functions in the [SMA].”

One of the general recommendations of the SMPP is to “give local governmental agencies with jurisdiction in the Marsh primary responsibility for carrying out the [SMPP] through a Local Protection Program.” Thus, the Suisun Marsh LPP is composed of multiple components for guiding the land use and zoning for the local governmental agencies, including Solano County, the City of Fairfield, the Solano County Local Agency Formation Commission, and the Suisun Mosquito Abatement District. The Solano County component provides land use plan policies and zoning for properties in the SMA. In 1977 the State Legislature enacted the Suisun Marsh Preservation Act (SMPA),¹ which put into statutory form many of the policies of the SMPP.

The SMPA directs the Commission to approve or disapprove amendments to the LPP; however, the Commission cannot require edits to previously certified policies unless the applicant proposes a change to the policy,² or unless the SMPP is amended to conflict with a previously certified policy.³ If the Commission finds a potential issue with a certified policy, BCDC may request the applicant to change the policy, but the request does not have to be granted by the applicant. If BCDC finds the potential issue to be significant and the applicant does not wish to change the policy, then the Commission may determine that amendments to the SMPP are needed. Making these changes to the SMPP would then require that the LPP components be updated by the County to align with the SMPP, subject to an appeal process.⁴

History of the Solano County LPP. On November 4, 1982, BCDC certified the Solano County component of the Suisun Marsh LPP, comprised of elements of both the Solano County General Plan and the Solano County Code. On February 2, 1999, the Commission certified the latest amendment to the County’s LPP component in connection with the Montezuma Wetlands project.⁵

In 2008, the County adopted a comprehensive update to the Solano County General Plan, and in 2012, the County adopted a comprehensive update to the County Code, superseding the prior versions of those documents. BCDC staff worked with the County staff during 2008 to analyze the consistency of proposed General Plan policies with the SMPA and the SMPP. Some changes were made to the new General Plan that included both new policies for the PMA and SMA of the Suisun Marsh, and the previously certified Solano County component of the LPP.

Following adoption of the General Plan, the County also worked with BCDC staff to craft zoning ordinances to implement the General Plan, and to modify recently adopted General Plan policies so that the LPP policies would be consistent with the SMPA and SMPP. In 2011, the

¹ Cal. Pub. Res. Code (PRC) §§ 29000 – 29612.

² PRC § 29422.

³ PRC § 29202(b).

⁴ The procedure in place for the Commission to induce a change in the LPP is codified in Public Resources Code Section 29202, wherein the Commission is given the authority to amend the SMPP by resolution⁴. The County must then be notified of any changes they must make to their LPP in order to be in compliance with the updated SMPP. If the County agrees to comply with the amendment, the County is then given one year to bring their LPP into conformity with the amended SMPP. If the County objects to the amendment to the plan and notifies the legislature of its objection, then the County is relieved of its obligation to amend the LPP unless until the legislature ratifies the amendment by statute. If the legislature enacts such a statute, the County will then have to bring their LPP into conformity with the SMPP amendment.

⁵ 14 Cal. Code of Regulations (CCR) § 11990.

Commission adopted Bay Plan Amendment 1-10 amending Bay Plan Map 3, the Marsh Plan findings and policies regarding water-related industry, the Marsh Plan maps, and the Resolution 16 boundaries of the water-related industrial priority use designation at Collinsville.⁶ The amendment ensured that County and BCDC policies on the location and size of the water-related industrial priority use area at Collinsville were consistent.

In 2012, the Solano County Board of Supervisors adopted an amendment to the County's LPP component. This amendment incorporated the 2008 General Plan update and the adoption of Zoning Code text amendments; amended Chapter 31 addressing grading, drainage, land leveling and erosion control; replaced Chapter 6.4 of the County Code regulating sewage disposal systems with revisions to County policy regulating sewage disposal systems within the Suisun Marsh; and amended the Zoning maps relating to the Water-Related Industrial Reserve Area around Collinsville and in the SMA consistent with the 2008 General Plan.

The County staff submitted these changes to BCDC for certification on September 28, 2012. BCDC staff prepared a Staff Summary Report and Preliminary Recommendation, held a public hearing on December 6, 2012, and prepared a staff recommendation in support of a favorable vote on January 17, 2013. Issues raised in the 2012 staff report were Wireless Communication Facilities, Commercial Wind Energy Policy, and the status of the SMPP. However, the County withdrew the proposed amendments to its LPP in order to reevaluate and further refine some of the proposed text in light of the public comments.

In 2015, County and BCDC staff renewed discussions regarding the Solano County LPP component; however, County staff did not formally apply to amend the LPP. During these discussions BCDC staff suggested additional edits including (1) adding a clarification that wind energy development in the Collinsville area currently is outside the Marsh; (2) refining text describing the operation and use of the Potrero Hills Landfill site; (3) adding a clarification that characterizes the restrictions on floating home communities and golf courses in the marsh in Commercial Recreation designations; and (4) adding clarification that no airports, schools, or other public/quasi-public uses are or will be allowed in the Marsh.

In 2018, the County submitted the Solano County LPP component for certification. With the exception of concerns regarding wireless communication facilities and wind energy development, the issues raised in 2012 and 2015 have been resolved. The 2018 amendment to the Solano County LPP component is attached as Exhibit A.

Staff Summary

Procedural History and Content of 2018 LPP Component Amendment. The 2018 Solano County LPP component amendment is based largely on the 2012 Amendment and makes numerous clarifications and grammatical corrections to that prior document.

The County circulated the amendment for public comment in August 2018, held a public hearing with its Planning Commission in September 2018, and the Solano County Board of Supervisors adopted the amended LPP on October 2, 2018. County staff submitted the LPP component application to BCDC for certification on October 29, 2018. On November 20, 2018,

⁶ 14 CCR § 11900(b)21.

in accordance with BCDC regulations, BCDC staff requested comments on the County's LPP component amendment materials from California Department of Fish and Game (CDFW); California Department of Health Services; all local governments in the County; Regional Water Quality Control Board, San Francisco Bay Region; State Lands Commission; Attorney General's Office (Deputy Assigned to the Commission); U.S. Army Corps of Engineers, San Francisco District. No comments were received. BCDC staff also reviewed the proposed amendments for their consistency with the SMPA, SMPP, and the *San Francisco Bay Plan* (Bay Plan).

While some of the issues noted above, raised in the 2012 and the 2015 discussions, have been resolved, a few issues remain. Some of these issues stem from the original language of the LPP approved in 1982, which has not been changed. As discussed previously, pursuant to the SMPA, BCDC can request, but cannot require any modification of any previously certified LPP policy, without ratification by the Legislature.

Issues Resolved in the 2018 Amendment. With continued communication, BCDC staff and County staff have resolved the following issues identified since the proposed 2012 Amendment.

Potrero Hills Landfill. The Potrero Hills Landfill has been serving the surrounding communities for decades. Regarding the landfill site the 1977 SMPA states:

“29409. Development of Solid Waste Disposal Site in Potrero Hills.

Notwithstanding the policies of the protection plan, the local protection program may not preclude the future development of a new solid waste disposal site in the Potrero Hills if it can be demonstrated that the construction and operation of solid waste facilities at that site would not have significant, adverse ecological or aesthetic impacts on the marsh.”

Likewise, the 1976 SMPP states:

“The Solano Garbage Company should be permitted to continue its existing County approved operation until it reaches capacity. Expansion of this facility or development of a new site in the Potrero Hills for a central solid waste disposal facility could impact upland grassland areas, which provide valuable habitat for Marsh-related wildlife. However, future development of a new solid waste disposal site in the Potrero Hills should be permitted if it can be shown that the construction and operation of such facilities will not have significant adverse ecological or aesthetic impacts on the Marsh.”

The County-approved LPP includes General Plan Chapter 8 land use policy PF.P-31 that has been edited to read:

"PF.P-31: The Public/Quasi-public land use designation applied to the Potrero Hills Landfill is a temporary designation and shall be limited to only a solid waste facility that is established consistent with Solano County Suisun Marsh Local Protection Program ~~and Suisun Marsh Protection Plan~~. The temporary designation is for the life of a facility, as permitted. Once ~~any portion of~~ the facility is closed, the agricultural land use designation will be restored and in effect."

In addition to this, SM.P-28 has been edited to read:

“SM.P-28: The Potrero Hills Landfill (~~former Solano Garbage Company~~) should be permitted to continue its ~~existing~~ County approved operation until it reaches final capacity and is closed. Expansion of this facility could impact upland grassland areas, which provide valuable habitat for marsh-related wildlife. However, pursuant to section 29409 of the Suisun Marsh Preservation Act, expansion of the Potrero Hills Landfill should be permitted if it can be shown that the construction and operation of such facilities will not have significant adverse ecological or aesthetic impacts on the Suisun Marsh.”

The County-approved LPP also includes the following footnote on the Use Table 28.22A in the County Code, which has been edited to state:

"5. During or subsequent to final closure of any waste disposal site, the Planning Commission may approve ~~any beneficial reuse of the waste disposal use~~ that (i) is compatible with the approved closure and/or post-closure plans for the site, (ii) ~~would not be detrimental to~~ is compatible with existing or anticipated agricultural land uses in the vicinity, and (iii) would not subject occupants of the site, neighbors, or the environment, to risks associated with the wastes which have been disposed of at the site."

The edits to the LPP clarify that the landfill may only be operated as currently permitted, and only agricultural use may be allowed following closure of the landfill. The approved BCDC permit (M) 2010.03 for the landfill describes the closure and post-closure plans, including ceasing all landfill operations, removing all structures related to the landfill operation, restoring by covering the site with suitable material and replanting the site with native vegetation, and return the upland grassland habitat to agricultural use. Furthermore, the design of the Landfill consists of approximately 33 cells, each approximately 10 acres in surface area. When a cell is filled to capacity, it is closed, and a new cell is opened. The language “any portion of” was removed because it suggested that the County would amend its General Plan Land Use Diagram each time one of these cells was closed, which was not the County’s intent. Thus, this issue has been resolved.

Issues Identified that may Require Updates to the SMPP and SMPA. BCDC staff has identified a few outstanding issues, including policies that allow wireless communication facilities and commercial wind development that may not be addressed without legislative action/authority. As described above, the SMPA directs the Commission to approve or disapprove amendments to the LPP; however, the Commission cannot require edits to previously certified policies unless the applicant proposes a change to the policy,⁷ or unless the SMPP is amended to conflict with a previously certified policy.⁸ County staff have not addressed these issues in this amendment, as they stem from the original certified language.

⁷ PRC § 29422.

⁸ PRC § 29202(b).

Wireless Communication Facilities. Policies regarding cellphone towers and other wireless communication facilities are not included in the SMPP or the certified LPP because the technology did not exist at the time. Today, the majority of people living, working, and recreating in the Marsh are cellphone users. In the County-approved LPP amendment, the “Table of Allowed Uses” for the Suisun Marsh Agricultural District categorizes towers for a wireless communication facility as an allowed use. While Policy SM.P-25 does not address wireless facilities directly, it addresses public utilities and telephone lines. The amendment removed the following text from Policy SM.P 25, “and upland areas necessary to protect the Marsh,” in describing where these policies apply. While an average cellphone has a maximum range of approximately 22 miles, and the Marsh is roughly 13 miles across, trees, hills, buildings, and other features can restrict and compromise cellphone range. In 2012, BCDC expressed concerns to Solano County about the potential visual impacts of additional towers in the SMA as cellphone companies may wish to add more towers to compete for service. The County, in turn, requested that the policy be retained because the LPP provides adequate protections to preserve the visual characteristics of the Marsh. If properly applied, these policies should adequately protect the visual characteristics of the Marsh. For example, SM.P-47, on page 44, states “[e]xisting habitats should be protected from encroachment due to their own visual value and their role in maintaining the marsh ecosystem and its overall scenic value.” However, this issue highlights the need to update the SMPP to include explicit policies to address development types, such as wireless communication facilities, that were not in existence in 1976.

Commercial Wind Energy Policy. The 1982 LPP contains Utilities, Facilities and Transportation policy 10, now SM.P.-34, which allows for wind energy development in the Secondary Management Area of the Marsh. This policy states:

“SM.P.-34. Wind energy is an important renewable, natural resource which is limited in its statewide distribution. Areas which are endowed with the resource should be considered for prudent development of wind energy. Certain areas within the Suisun Marsh have been identified as having significant potential for wind energy resource development. Specifically identified are areas west of I-680 and in the Potrero Hills; however, numerous other areas may have potential for development of private or commercial wind energy machines. Installation of wind turbines in the Suisun Marsh could have a significant impact upon maintenance of the area in its present natural state, on Marsh wildlife, and on the visual characteristics of the marsh. Therefore, careful consideration will need to be given projects on a case by case basis to ensure that significant adverse ecological or aesthetic impacts on the Marsh will be avoided. The County’s objective is to balance the prudent use of wind resources of the Marsh with the need to protect and maintain its essential environmental qualities. The following should be followed in siting wind energy projects: (1) Commercial wind turbine generators should be permitted in the Secondary Management Area only. (2) Projects should not be allowed to proliferate in the Marsh, but should be allowed only where monitoring has shown productivity to be feasible. (3) The location and density of machines should not

substantially alter the principal (agricultural or wetland) allowed uses in the ~~the~~ Marsh. (4) Roads and utility transmission lines to serve machines and transmit power from machines must be installed in conformance with provisions of the Suisun Marsh Preservation Act. (5) In order to protect the biological resources of the ~~the~~ Marsh, the design, density, height, noise level, illumination, and location of wind turbine generators and ancillary facilities should minimize or avoid the following adverse effects: collision hazards for birds, interference with migratory flight patterns, or disturbance of wildlife habitat. Design considerations of importance should include asynchronous machines, low-noise design, subdued security lighting, and minimal tower lighting. (6) All construction must be carried out so as to minimize erosion and prevent sedimentation in the ~~the~~ Marsh. (7) The installation and operation of wind turbine facilities must protect the visual characteristics of the ~~the~~ Marsh. In order to minimize the impact upon the aesthetics of the ~~the~~ Marsh as a natural open space area, wind turbine generators and ancillary facilities should be designed and sited to complement the natural landscape whenever feasible, consistent with the following guidelines: colors should blend with the landscape; lighting should be subdued and be provided for safety and security reasons only; and facilities should be located off the ridgeline unless to do so would result in higher tower height, significant grading, or cut and fill.”

In the 2012 draft of the LPP amendment, the County did propose changes to the wind energy policy, including changing the location identified as the primary wind resource area in the County, and clarifying that wind energy development is inappropriate in the Primary Management Area of the Suisun Marsh. In reviewing these proposed changes, BCDC staff consulted with the CDFW, the US Fish and Wildlife Service (USFWS), the Suisun Resource Conservation District (SRCD), and the California Natural Resources Agency (CNRA), pursuant to the requirements of the SMPA and SMPP.

Initially, BCDC staff sought direction from CDFW on ways to strengthen the certified policy, which allows development of commercial wind energy facilities in the Marsh under certain conditions. Since the Commission certified the policy over 30 years ago, considerable new scientific information about the wildlife impacts of commercial power windmills has been published. CDFW recommended that the LPP be amended to preclude wind development in the SMA because, in part, it “could alter the use and migration patterns of both migratory and resident bird species and bats.” The USFWS expressed similar concerns, and noted that permits were not currently available for “taking” of migratory birds under the Migratory Bird Treaty Act. In 2012, the SRCD Board submitted a comment letter to BCDC opposing retention of the wind energy policy in the LPP. Finally, despite the State of California’s goal of reaching renewable energy targets, the CNRA, in consultation with the California Energy Commission and the Governor’s office, also supported CDFW’s opposition to wind development in the Marsh.

Thus, in 2012 BCDC staff requested that the County remove the existing wind policy from the LPP. However, Solano County did not accept the requested edit and the policy was retained in the 2018 amendment.

In 2015, the discussion of wind energy development continued, specifically with regard to the Collinsville area. Since the LPP component covers only those areas within the Marsh, and no wind energy projects are located in the Marsh, the text as written is inaccurate. The County-approved LPP component includes excerpts from the General Plan that cover the entirety of the Collinsville area, including areas inside and outside the Marsh, including the following text. BCDC staff suggested that the language "outside the Marsh" be added to the policy language below to make it clear that no wind energy projects are currently located within the boundary of the Suisun Marsh:

“Current land uses in Collinsville include natural resources land, utility operations, publicly owned open land, residences, wind farms, and agricultural lands. Dry farming, which rotates between grain and grazing sheep, is the major agricultural practice in this area. Much of the land used for dry farming is also used for production of wind energy outside the marsh.”

The above discussion addresses Commercial Wind Energy generation. Wind turbines for private use on private properties, across numerous zoning designations, are allowed so long as the towers are less than 100 feet in height. This issue highlights the need to update the SMPP to include policies to address development types, such as wind energy turbines, that were not in existence in 1976.

County Response. In general, County staff have chosen to keep this amendment as simple as possible, and focused on the proposed changes that appear in the updates to the General Plan and County Code as a whole.

With regard to wireless communication facilities, County staff have assured BCDC staff that wireless communication facilities are not allowed in the PMA, but are allowed in the SMA with a Marsh Development Permit and Use Permit, as required by the Federal Communications Commission. County restrictions would prevent the location of wireless communication facilities within ¼-mile of scenic roadways, and height limits would be tied to zoning districts, with a typical height of 35 feet. Any new tower would be subject to the review of the Solano County Planning Commission.

With regard to future commercial wind energy development, County staff have stated that first, the Solano County Airport Land Use Commission has “line of sight” requirements that would prevent wind energy development in the SMA due to its proximity to the Travis Air Force Base. Second, if wind energy development was proposed in the SMA, the County’s Zoning Code requires a use permit, subject to the approval of the County Planning Commission, and an Environmental Impact Report, as well as a Marsh Development Permit from the County, would be required. Regarding identifying existing wind turbines as being located “outside the marsh,” the County has stated that as part of the General Plan update process special community participation programs were conducted in four special study areas. The Collinsville area was identified as one of the four Special Study Areas that have unique planning issues. The study area included both property within and outside the Suisun Marsh. The area outside the Marsh is located to the east and includes property that is grazed and developed with wind turbine generators.

Status of the SMPP. The *Suisun Marsh Protection Plan*, or SMPP, has not undergone a comprehensive review since its adoption over 35 years ago by the Legislature. The Commission has undertaken targeted amendments to the Bay Plan to address specific issues, such as the 2007 update to the Bay Plan managed wetlands policies, and the 2012 Bay Plan update that addresses climate change. However, changes in state law, advancements in technology, and our understanding of environmental conditions have created a need for a comprehensive update to the SMPP.

Since 2012, the last time this LPP component came before the Commission, new documents have been published that describe best management practices and environmental conditions in the Marsh. These include the Delta Stewardship Council's *Delta Stewardship Plan* and the *Suisun Marsh Habitat Management, Preservation, and Restoration Plan* (SMHMPPR), prepared by the U.S. FWS, National Marine Fisheries Service, the CDFW, the SRCD, the U.S. Bureau of Reclamation, and the California Department of Water Resources. The *Delta Stewardship Plan* guides state and local agencies to help achieve the co-equal goals of providing a more reliable water supply for California, and protecting, restoring, and enhancing the Delta ecosystem, including the Suisun Marsh. The SMHMPPR includes provisions that constrain the management activities of managed wetlands beyond that which is provided in the SMPP. These new documents better reflect the current status of Marsh activities and practices, and, along with the issues discussed above, demonstrate the need for a comprehensive evaluation and update to the SMPP.

Summary of Environmental Documentation Prepared by County. The Solano County Department of Resource Management prepared an Initial Study and Negative Declaration for the Solano County LPP component amendment in accordance with the State CEQA Guidelines Section 15063.

Summary of Comments and Response. As stated previously, on November 20, 2018, BCDC staff circulated copies of the County's LPP component amendments to parties listed pursuant to Commission Regulation 11202, requested comments regarding the proposed amendments and their consistency with the SMPA, SMPP, and Bay Plan by January 14, 2019. No comments were received during this time.

Preliminary Staff Recommendation

BCDC staff recommends certifying the 2018 Amendment to the Solano County's Component of the Suisun Marsh Local Protection Program. As detailed above, staff recommends that the Commission find that the new and modified policies contained within the LPP are consistent with Public Resources Code Sections 29000 through 29612, the policies of the *Suisun Marsh Protection Plan*, and the *San Francisco Bay Plan* and therefore, that the Commission [certify](#) the proposed Amendment.

However, there are several remaining and emerging issues in the Marsh that staff believes generate the need to take a comprehensive look at the Suisun Marsh Protection Plan, and the Suisun Marsh Preservation Act. First, as described above, wireless communication facilities were not contemplated when the SMPP was first approved. Second, given the resource agencies' concerns over wind energy policies that remain in the County LPP, and the

inability to influence this policy under the process mandated in the SMPA, BCDC staff also recommends that the Commission consider addressing whether changes to the SMPP and SMPA are needed. Third, the SMPP should be updated to reflect the best available science regarding rising sea level. Most land uses in Suisun Marsh will be impacted by rising sea level at 12 inches, which is anticipated to occur as early as 2030.⁹ Rising sea level will affect not only the environment of Suisun Marsh, but also water supply and quality, natural gas resources, recreation and access, and water-related industry, and findings and policies should be added to the SMPP to reflect those impacts. Other emerging issues include those addressed as part of the Environmental Justice and Bay Fill for Habitat Bay Plan amendments, for which applicable policies and considerations could be added to the SMPP and other guiding and supporting BCDC documents.

The creation of the Delta Stewardship Council and its jurisdiction over the Marsh, as well as some of the initiatives in the Delta Plan and the SMHMPRP, elevate the importance of assessing the SMPP and SMPA. For all these reasons, the staff at BCDC recommends that the Commission consider a comprehensive review of the SMPP and the SMPA to address these emerging issues in the Marsh. This review should be conducted collaboratively with the County and other agencies and interested parties in the Marsh and would require extensive staff resources.

⁹ Source. BCDC's Bay Shoreline Flood Explorer:
<https://explorer.adaptingtorisingtides.org/explorer>. Accessed on January 19, 2019.